

REMARKS

The present Response is filed to address the Official Action of October 30, 2007, and is timely filed within the three-month shortened statutory window. In view of the following remarks, reconsideration of the Examiner's rejections and allowance of all pending claims is earnestly solicited.

Claims 1-31 and 39-42 are pending in the present application. Each of those claims was rejected in the previous Official Action, and Applicant's most recent amendment followed. Although the arguments made therein were persuasive, the Examiner has set forth a series of new rejections such that claims 1-31 and 39-42 still remain rejected.

Toward this end, the Examiner rejected claims 1-5, 7-31, and 39-42 under 35 U.S.C. §103(a) based on his contention that the claims are unpatentable over Studer et al. (U.S. Patent No. 6,146,383) in view of Young (U.S. Patent No. 6,626,906). Of these claims, claims 1, 19, 25-26, 29, and 31 are independent claims. In the Examiner's view, Studer includes each of the elements of such claims with the exception of "a coupling element that has a fixation element that is capable of not only axial movement, but also linear movement, allowing the fastener/locking element to slide up and down, and thus also allowing a first locking element to be a means of securing the head of the fastener at any point along the length of the head portion." The Examiner contends that Young discloses such features, and that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the fixation device of Studer to have at least the linear movement capability of Young to better fix the screw, for example, when a deeper fixation into the vertebrae is required.

Applicant traverses this contention. The inventive device of Studer alone is already extremely complex with the spherical head part (2) of the of the bone screw (1) being

pivotal within the clamping screw (7). In Applicant's view, it would have been difficult for one skilled in the art to include features of Young to permit the linear movement capability of Young in a device based on Studer.

More specifically, such features would invariably at least include the collet [5]¹ of Young, although Applicant is not entirely sure where in the Studer device the Examiner would place such a collet. For example, it appears evident that the collet [5] would not operate properly if placed between the spherical head part (2) of the bone screw (1) and the clamping screw (7). Rather, it appears that the collet [5] would have to be placed between the clamping screw (7) and the reception part (3). If created to this configuration, one would have the clamping screw (7) essentially being threaded to the inside of the collet [5] and then the collet itself being threaded to the reception part (3). If that were the case, there still would not be linear movement between the clamping screw (7) and reception part (3). In addition, if there were linear movement, the situation would arise where the front surface of the collar (20) of the bone screw would not abut shoulder (5) of the reception part. Applicant believes that this would permit undesirable flexing of the bone screw at its attachment to the spherical head part (2), and therefore a device would not be arranged in such a manner.

All told, it is therefore Applicant's contention that not only could one not reasonably be expected to combine the inventive structures of Studer and Young in the manner suggested by the Examiner, but that in any event it would not have been obvious to do so at the time of Applicant's invention. For this reason, it is firmly believed that the rejected independent claims are allowable as presently set forth, and favorable

¹ For ease of reference, reference numerals presented within square brackets, i.e. [x], relate to the Young reference while those presented within parentheses, i.e. (y), relate to the Studer reference.

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reconsideration is earnestly solicited. For this reason, it is also believed that the dependent claims, namely claims 2-5, 7-24, 27-28, 30, and 39-40 are allowable. It is also believed that such claims include additional patentable subject matter, not presented in their respective base claims.

The Examiner also rejected claim 6 under 35 U.S.C. §103(a) over Studer in view of Young and in further view of Gu (U.S. Patent No. 6,146,383) in view of Young (U.S. Patent Application No. 6,280,443). Claim 6 ultimately depends from claim 1. For the reasons addressed above, it is therefore believed that claim 6 is allowable as presented, as Gu fails to remedy to noted shortcomings of Studer and Young. In addition, it is believed that claim 6 includes additional patentable subject matter.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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